IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Chhagan Lal. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No.1169/2006

Date of Order: July 18, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Niranjan Singh, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. G.J. Gupta, for the respondent No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has challenged the order dated 4-3-1989 passed by the Judicial Magistrate, Raisinghnagar (for short, "the trial Court" hereinafter), whereby the trial Court took cognizance of the offences and issued process against the petitioner.

Heard learned counsel for the parties. Perused the order impugned.

It is contended by the learned counsel for the petitioner that at the relevant time of the occurrence, the petitioner was the Circle Officer and Station House Officer, Police

Station, Padampur and a crime case for the offences under Sections 430 and 379 IPC was registered against the complainant-respondent No.2 Balwant Singh. On the relevant date, the accused therein, i.e. respondent No.2 Balwant Singh was arrested by the petitioner and produced before the Court. Subsequent thereto, a Challan was filed against respondent No.2 Balwant Singh and the trial was held, in which the competent criminal court convicted respondent No.2 Balwant Singh for the offences under Sections 430 and 379 IPC.

I have carefully gone through the FIR No.17 dated 21.2.1986 of Police Station, Padampur and the relevant material.

It is further contended by the learned counsel for the petitioner that the petitioner has arrested the respondent No. 2 while discharging his official duties as a public servant and without there being a sanction to prosecute him, as envisaged under Section 197 of the Code, the proceeding against the petitioner is bad in the eye of law. Learned counsel submits that the trial Court fell in error in taking the cognizance against the petitioner in absence of a sanction to prosecute him, as envisaged under Section 197 of the Code. He has relied on a decision of the Hon'ble Supreme Court in Sankaran Moitra Vs. Sadhna Das & Anr., 2006 Cr.L.R. (SC) 295.

Section 197 of the Code reads as under:-

"197. Prosecution of Judges and public servants.- (1) When any person, who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government.

(b) in the case of person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State Government:

Provided that where the alleged offence was committed by a person referred to in Cl. (b) during the period while a proclamation issued under Cl. (1) of Art. 350 of the Constitution was in force in a State, Cl. (b) will apply as if for the expression "State Government" occurring there, the expression "Central Government" were substituted.

(2)No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3)The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3-A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any

> offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a proclamation issued under Cl. (1) of Art. 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.
>
> (3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a proclamation issued under Cl. (1) of Art. 326 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.
>
> (4)The Central or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

In the instant case, there is no sanction for prosecution of the petitioner. This fact has not been disputed that at the relevant time, the petitioner was the Circle Officer and Station House Officer, Police Station, Padampur and Crime Report No.17 dated 21-2-1986 was registered against the respondent No.2 for the offences under Sections 430 and 379

IPC and the respondent No.2 was wanted in that crime report. The petitioner, exercising the powers of the Station House Officer, Police Station, Padampur, arrested the respondent No.2 in the non-bailable offences and, thus, the act of the petitioner was "while discharging the official duty."

The Hon'ble Apex Court, in Sankaran Moitra Vs. Sadhna Das & Anr. (supra) held as under:-

> "Coming to the facts of this case, the question is whether the appellant was acting in his official capacity while the alleged offence was committed or was performing a duty in his capacity as a police officer which led to the offence complained of. That it was the day of election of the State Assembly, that the appellant was in uniform; that the appellant travelled in an official jeep to the spot, near a polling booth and the offence was committed while he was on the spot, may not by themselves attract Section 197 (1) of the Code. But, as can be seen from the facts disclosed in the counter affidavit filed on behalf of the State based on the entries in the General Diary of the Phoolbagan Police Station at 1400 hours of some disturbance at a polling booth, that it took a violent turn and clashes between the supporters of two political parties was imminent. It was then that the appellant reached the site of the incident in his official vehicle. It is seen that a case had been registered on the basis of the incidents that took place and a report in this behalf had also been sent to the superiors by the Station House Officer. It is also seen and it is supported by the witnesses examined by the Chief Judicial Magistrate while taking cognizance of the offence that the appellant on reaching the spot had a discussion with the officer-in-charge who was stationed at the spot and thereafter a lathi charge took place or there was an attack on the husband of the complainant and he met with his death. Obviously, it was part of the duty of the appellant to prevent any breach of law and maintain order on the polling day or to prevent the blocking of voters or prevent what has come to

> be known as booth capturing. It, therefore, emerges that the act was done while the officer was performing his duty. That the incident took place near a polling booth on an election day has also to be taken note of. The complainant no doubt has a case that it was a case of the deceased being picked and chosen for ill-treatment and he was beaten up by a police constable at the instance of the appellant and the officer-in-charge of the Phoolbagan Police Station and at their behest. If that complaint were true it will certainly make the action, an offence, leading to further consequences. It is also true as pointed out by the learned counsel for the complainant that the entries in the General Diary remain to be proved. But still, it would be an offence committed during the course of the performance of his duty by the appellant and it would attract Section 197 of the Code. Going by the principle, stated by the Constitutional Bench in Matajog Dobey (AIR 1956 SC SC 44), it has to be held that a sanction under Section 197 (1) of the Code of Criminal Procedure is necessary in this case."

Keeping in view the aforesaid decision of the Hon'ble Supreme Court, in my view, the petitioner cannot be prosecuted without there being a sanction for prosecution as envisaged under Section 197 of the Code and, therefore, he is entitled for the protection of Section 197 of the Code.

In the result, the miscellaneous petition is allowed; the impugned order dated 4-3-1989 passed by the trial Court is set aside and the petitioner is discharged from the offences under Sections 147, 148, 336 and 430 IPC.

(H.R. PANWAR), J.

mcs